

Senate Bill No. 546

Passed the Senate July 8, 2013

Secretary of the Senate

Passed the Assembly June 25, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 44949 of the Education Code, and to amend Sections 11500, 11503, 11505, 11506, 11507, 11507.3, 11509, 11516, and 11520 of the Government Code, relating to education employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 546, Wright. Education employment: termination: hearing.

Existing law requires that, when a reduction in the number of certificated employees employed by a school district is authorized, the layoffs occur in order of employee seniority. Under existing law, when an employee is terminated due to a reduction in force pursuant to these provisions, the employee has the option to request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. Existing law requires that this hearing be conducted in accordance with specified provisions of law. With respect to this hearing, existing law defines the “respondent” as any person against whom an accusation is filed pursuant to specified provisions of law. Additionally, existing law provides for a “notice of defense,” which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under specified provisions of law.

This bill would change the phrase “accusation” to “District Statement of Reduction in Force,” and “Notice of Defense” to “Notice of Participation in Reduction in Force Hearing” for purposes of the provisions relating to the termination of a certificated employee due to a reduction in force and would make conforming changes.

This bill would also make technical, nonsubstantive changes.

The people of the State of California do enact as follows:

SECTION 1. Section 44949 of the Education Code is amended to read:

44949. (a) (1) No later than March 15 and before an employee is given notice by the governing board that his or her services will

not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a school district that has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

(2) Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) If a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

(1) The respondent shall file his or her notice of participation, if any, within five days after service upon him or her of the District Statement of Reduction in Force and he or she shall be notified of this five-day period for filing in the District Statement of Reduction in Force.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the District Statement of

Reduction in Force, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils of the schools. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(e) If after a request for hearing pursuant to subdivision (b) a continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) that occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 that occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

(f) The governing board may adopt from time to time rules and procedures not inconsistent with this section as may be necessary to effectuate this section.

SEC. 2. Section 11500 of the Government Code is amended to read:

11500. In this chapter unless the context or subject matter otherwise requires:

(a) “Agency” includes the state boards, commissions, and officers to which this chapter is made applicable by law, except that wherever the word “agency” alone is used the power to act may be delegated by the agency, and wherever the words “agency itself” are used the power to act shall not be delegated unless the statutes relating to the particular agency authorize the delegation of the agency’s power to hear and decide.

(b) “Party” includes the agency, the respondent, and any person, other than an officer or an employee of the agency in his or her official capacity, who has been allowed to appear or participate in the proceeding.

(c) “Respondent” means any person against whom an accusation or District Statement of Reduction in Force is filed pursuant to Section 11503 or against whom a statement of issues is filed pursuant to Section 11504.

(d) “Administrative law judge” means an individual qualified under Section 11502.

(e) “Agency member” means any person who is a member of any agency to which this chapter is applicable and includes any person who himself or herself constitutes an agency.

SEC. 3. Section 11503 of the Government Code is amended to read:

11503. (a) A hearing to determine whether a right, authority, license, or privilege should be revoked, suspended, limited, or conditioned shall be initiated by filing an accusation or District Statement of Reduction in Force. The accusation or District Statement of Reduction in Force shall be a written statement of charges that shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his or her defense. It shall specify the statutes and rules that the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of those statutes and rules. The accusation or District Statement of Reduction in Force shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

(b) In a hearing involving a reduction in force that is conducted pursuant to Section 44949 of the Education Code, the hearing shall be initiated by filing a “District Statement of Reduction in Force.”

For purposes of this chapter, a “District Statement of Reduction in Force” shall have the same meaning as an “accusation.” Respondent’s responsive pleading shall be entitled “Notice of Participation in Reduction in Force Hearing.”

SEC. 4. Section 11505 of the Government Code is amended to read:

11505. (a) Upon the filing of the accusation or District Statement of Reduction in Force the agency shall serve a copy thereof on the respondent as provided in subdivision (c). The agency may include with the accusation or District Statement of Reduction in Force any information that it deems appropriate, but it shall include a postcard or other form entitled Notice of Defense, or, as applicable, Notice of Participation, that, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation or District Statement of Reduction in Force and constitute a notice of defense, or, as applicable, notice of participation, under Section 11506. The copy of the accusation or District Statement of Reduction in Force shall include or be accompanied by (1) a statement that respondent may request a hearing by filing a notice of defense, or, as applicable, notice of participation, as provided in Section 11506 within 15 days after service upon the respondent of the accusation or District Statement of Reduction in Force, and that failure to do so will constitute a waiver of the respondent’s right to a hearing, and (2) copies of Sections 11507.5, 11507.6, and 11507.7.

(b) The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation or District Statement of Reduction in Force is delivered or mailed to the agency within 15 days after the accusation or District Statement of Reduction in Force was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation or District Statement of Reduction in Force without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or, as applicable, Notice of Participation, or by delivering or mailing a notice of defense, or, as applicable, notice of participation, as provided by Section 11506 of the Government Code to: (here insert

name and address of agency). You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code in the possession, custody, or control of the agency, you may contact: (here insert name and address of appropriate person).

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the agency or, if an administrative law judge has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to give notice within 10 days will deprive you of a postponement.

(c) The accusation or District Statement of Reduction in Force and all accompanying information may be sent to the respondent by any means selected by the agency. But no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent shall have been served personally or by registered mail as provided herein, or shall have filed a notice of defense, or, as applicable, notice of participation, or otherwise appeared. Service may be proved in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or agency rule requires the respondent to file the respondent's address with the agency and to notify the agency of any change, and if a registered letter containing the accusation or District Statement of Reduction in Force and accompanying material is mailed, addressed to the respondent at the latest address on file with the agency.

(d) For purposes of this chapter, for hearings involving a reduction in force that are conducted pursuant to Section 44949 of the Education Code, a "Notice of Participation" shall have the same meaning as a "Notice of Defense."

SEC. 5. Section 11506 of the Government Code is amended to read:

11506. (a) Within 15 days after service of the accusation or District Statement of Reduction in Force the respondent may file with the agency a notice of defense, or, as applicable, notice of participation, in which the respondent may:

(1) Request a hearing.

(2) Object to the accusation or District Statement of Reduction in Force upon the ground that it does not state acts or omissions upon which the agency may proceed.

(3) Object to the form of the accusation or District Statement of Reduction in Force on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense.

(4) Admit the accusation or District Statement of Reduction in Force in whole or in part.

(5) Present new matter by way of defense.

(6) Object to the accusation or District Statement of Reduction in Force upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

(b) Within the time specified the respondent may file one or more notices of defense, or, as applicable, notices of participation, upon any or all of these grounds but all of these notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense or notice of participation, and the notice shall be deemed a specific denial of all parts of the accusation or District Statement of Reduction in Force not expressly admitted. Failure to file a notice of defense or notice of participation shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation or District Statement of Reduction in Force shall be deemed waived.

(d) The notice of defense or notice of participation shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.

(e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

SEC. 6. Section 11507 of the Government Code is amended to read:

11507. At any time before the matter is submitted for decision, the agency may file or permit the filing of, an amended or supplemental accusation or District Statement of Reduction in Force. All parties shall be notified of the filing. If the amended or supplemental accusation or District Statement of Reduction in Force presents new charges the agency shall afford the respondent a reasonable opportunity to prepare his or her defense thereto, but he or she shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation or District Statement of Reduction in Force may be made orally and shall be noted in the record.

SEC. 7. Section 11507.3 of the Government Code is amended to read:

11507.3. (a) When proceedings that involve a common question of law or fact are pending, the administrative law judge on the judge's own motion or on motion of a party may order a joint hearing of any or all the matters at issue in the proceedings. The administrative law judge may order all the proceedings consolidated and may make orders concerning the procedure that may tend to avoid unnecessary costs or delay.

(b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense or notice of participation, or of any number of issues.

SEC. 8. Section 11509 of the Government Code is amended to read:

11509. The agency shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense, or, as applicable, notice of participation.

The notice to respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before [here insert name of agency] at [here insert place of hearing] on the ____ day of ____, 20__, at the hour of ____, upon the charges made in the accusation or District Statement of Reduction in Force served

upon you. If you object to the place of hearing, you must notify the presiding officer within 10 days after this notice is served on you. Failure to notify the presiding officer within 10 days will deprive you of a change in the place of the hearing. You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to [here insert appropriate office of agency].

SEC. 9. Section 11516 of the Government Code is amended to read:

11516. The agency may order amendment of the accusation or District Statement of Reduction in Force after submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that he or she will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence on his or her behalf. If such prejudice is shown, the agency shall reopen the case to permit the introduction of additional evidence.

SEC. 10. Section 11520 of the Government Code is amended to read:

11520. (a) If the respondent either fails to file a notice of defense, or, as applicable, notice of participation, or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.

(b) Notwithstanding the default of the respondent, the agency or the administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this subdivision, the agency's order takes precedence. The administrative law judge may order the

respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

- (1) Failure of the person to receive notice served pursuant to Section 11505.
- (2) Mistake, inadvertence, surprise, or excusable neglect.

Approved _____, 2013

Governor